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IN THE

Supreme Court of the United States

October Term, 1968

No. 298

GEORGE L. VAUGHN, JR.,
Petitioner,

vs.

MUNICIPAL COURT, LOS ANGELES JUDICIAL DISTRICT, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA,
Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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OPINION BELOW

The correct citation of the opinion of the District Court of Appeal, Second Appellate District, State of California, in this matter is 252 Cal. App. 2d 348.

STATEMENT OF THE CASE

The long history of this case, which is set forth only in part in the petition for certiorari herein, shows:

January 28, 1966 petitioner was adjudged in contempt of the respondent court.

April 15, 1966 the Superior Court of the State of California for the County of Los Angeles rendered judgment affirming the judgment of the respondent court following review of petitioner's contempt conviction.

July 6, 1967 the District Court of Appeal, Second Appellate District, State of California affirmed the judgment of the Superior Court upholding petitioner's contempt conviction.

October 4, 1967 the Supreme Court of California denied petition for hearing.

October 31, 1967 - November 3, 1967 the District Court of Appeal and the Supreme Court of the State of California denied petitions to recall the remittitur; to stay the execution of judgment and to reconsider the petition for hearing.

November 6, 1967 the Honorable W. O. Douglas, Associate Justice of the Supreme Court of the United States ordered that execution and enforcement of the judgment herein be stayed pending the filing of a petition for writ of certiorari with this court.

No petition for certiorari to review the judgments of the California Courts on the merits was ever filed with this court and the time for filing such petition expired January 4, 1968.

February 27, 1968 petitioner filed with the Supreme Court of the State of California a petition for writ of

mandate, certiorari, prohibition or habeas corpus. This petition was denied April 17, 1968. The petitioner now seeks review of the denial of this petition for writ of mandate, certiorari, prohibition, or habeas corpus by writ of certiorari from this court.

ARGUMENT

POINT I

THIS MATTER IS NOW MOOT SINCE THE PETITIONER HAS SERVED THE SENTENCE AND PAID THE FINE IMPOSED BY THE RESPONDENT COURT IN FULL.

On November 6, 1967 petitioner served one day of his five-day sentence prior to being released upon the stay order issued by Justice Douglas on that date. On July 26, 1968 petitioner was committed to the Los Angeles County Jail pursuant to the commitmnt of the respondent court, his petition to this court for stay of execution of sentence having been denied by Justice Fortas on that date. On July 29, 1968 petitioner was released from the Los Angeles County Jail upon expiration of his sentence. On July 26, 1968 the fine levied against petitioner was paid in full.

The United States Supreme Court is under an obligation to refrain from passing on moot questions.

Fay v. Noia, 372 U.S. 391, 9 L.Ed. 2d 837, 83 S. Ct. 822.

In *Rice v. Sioux City Memorial Parks Cemetery,* 349 U.S. 70, 99 L.Ed. 897, 75 S. Ct. 614, this court, in dismissing a writ of certiorari as improvidently granted, took notice of the fact that the Iowa Legislature had enacted corrective legislation which barred the ultimate question presented from again arising in that state.

POINT II

THE PETITION FOR CERTIORARI HEREIN FAILS TO SHOW A PROPER CASE FOR THE ISSUANCE OF THE WRIT.

A. The writ of certiorai will be granted only where a Federal question of substance and public importance has been decided in a state court and there are special and important reasons for granting the writ.

Rule 19, Rules of the United States Supreme Court provides that review on writ of certiorari will be granted only where there are special and important reasons therefor. The character of such reasons includes a case where a state court has decided a Federal question of substance not theretofore determined by this court or has decided it in a way probably not in accord with applicable decisions of this court.

A writ of certiorari will not be granted except in cases involving principles the settlement of which is of importance to the public as distinguished from that

of the parties, and in cases where there is a real and embarrassing conflict of opinion and authority between the Circuit Courts of Appeal.

Layne & Bowler Corp. v. Western Well Works, Inc., 261 U.S. 387, 393, 67 L. Ed. 712, 714, 43 S. Ct. 422.

While the Federal question may be "of substance" in the sense that, abstractly considered, it may present an intellectually interesting and solid problem, the United States Supreme Court does not sit to satisfy a scholarly interest in such issues or for the benefit of particular litigants.

Rice v. Souix City Memorial Park Cemetery, supra, 349 U.S. 70, 99 L. Ed. 897, 75 S. Ct. 614.

B. The petition for certiorari herein seeks only a review of the order of the California Supreme Court of April 17, 1968 denying petition for writ of mandate, certiorari, prohibition or habeas corpus since the time for filing petition for certiorari to review the decisions of the California courts on the merits exired in January, 1968.

When the California Supreme Court denied a hearing October 4, 1967, this matter became final on the merits as to the California courts. Although a stay of execution of judgment was ordered by Justice Douglas November 6, 1967 pending the filing of a petition for certiorari with this court, no such petition for review on the merits was ever filed and the time for filing expired January 4, 1968.

The petition for mandate, certiorari, prohibition, or habeas corpus filed in the California Supreme Court February 27, 1968 amounted to nothing more than an effort to relitigate by writ the same matters which had been decided against the petitioner on the merits and which had become final. The filing of this petition was, in effect, an effort to get a second appeal to which the petitioner was not entitled. The California Supreme Court denied this petition April 17, 1968 and the petition for certiorari now before this court seeks review only of the denial of the writ.

C. No substantial Federal question was decided by the California Supreme Court in denying the petition for writ of mandate, certiorari, prohibition or habeas corpus.

The denial by the California Supreme Court on April 17, 1968 of the petition for writ of mandate, certiorari, prohibition or habeas corpus decided no more than that the petitioner was not entitled to such a writ to review purported errors at the contempt hearing when these matters had already been litigated on appeal and had become final. This of course presents no Federal question at all, much less a Federal question of substance as required by Rule 19 of this court.

An examination of the "Questions Presented" in the petition herein shows that questions 1, 2, 3, 4, and 5 all relate to alleged errors at the contempt hearing. These are matters which became final after appeal and were not concerned in the writ proceeding sought to be reviewed here.

Petitioner's claims set forth in questions 6 and 7 that the Clerk of the District Court of Appeal wilfully failed to prepare a full record of the case for the California Supreme Court are not factually supported by the record. The duty is on the appeallant at all times to see that a proper record is prepared and sent up for review. There is no showing in the record herein that this petitioner used any diligence or made any effort at all to see that a proper record was prepared and

sent to the California Supreme Court prior to the date at which the time for review by the Supreme Court expired.

POINT III

THE PETITION FOR CERTIORARI HEREIN FAILS TO COMPLY WITH RULE 23, RULES OF THE UNITED STATES SUPREME COURT.

An examination of the petition for certiorari herein shows that it fails to comply with the requirements of Rule 23, Rules of the United States Supreme Court in a number of substantial respects.

1. There is no specification of any constitutional provisions, treaties, statutes, ordinances, or regulations claimed to be involved in this case as required by Rule 23 (1) (d).

2. The statement of the case and facts in the petition are not concise as required by Rule 23 (1) (e). To the contrary, the petition contains rambling, incoherent, repetitive and immaterial statements, setting forth at length the testimony most favorable to the petitioner and which is at variance with the facts found by the court.

3. The statement of the case fails to include any specification of the stage in the proceedings at which and the manner in which any Federal questions sought to be reviewed were raised; the

method of raising them or the way they were passed upon by the court as required by Rule 23 (1) (f).

4. There is no direct or concise argument setting forth the reasons relied on for allowance of the writ as required by Rule 23 (1) (h).

5. Apparently no copy of the judgment in question was appended to the petition as required by Rule 23 (1) (j).

The matters set forth under the statement of the case and facts in the petition for certiorari relate to the trial on the merits which is not before the court on this petition and for which no review can now be sought. Substantially none of this material relates to the petition for writ of mandate, certiorari, prohibition or habeas corpus, the denial of which is now sought to be reviewed.

The failure of a petitioner to present with accuracy, brevity and clearness whatever is essential to a ready and adequate understanding of the points requiring consideration is a sufficicent reason for denying the petition. (*Rule 23(4) Rules of the United States Supreme Court*) We submit that the petitioner has failed to comply with this provision.

CONCLUSION

This matter is now moot since petitioner has served his sentence and paid his fine in full. His petition is insufficient in form to meet the requirements of the court rules. It sets forth no substantial Federal question or any of the "special and important" reasons required by Rule 19 of this court and fails to present the semblance of a case for review by writ of certiorari. For these reasons your respondent submits that the petition should be denied.

Respectfully submitted,

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